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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/542,164

07/12/2005

Thomas F. Moran Jr.

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EXAMINER

LAMMIE, THERON F

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/542,164	Applicant(s) MORAN JR., THOMAS F.	
	Examiner Theron F. Lammie	Art Unit 3709	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-17 and 19-22 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12, 14, 15 and 19-22 is/are rejected.
- 7) ☒ Claim(s) 13, 16 and 17 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>7/12/2005</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Double Patenting

Claims 1, 6-21 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6371863 in view of (5826578), (6986910) and (6431991). Although the conflicting claims are not identical, they are not patentably distinct from each other because they only differ by added features such as actuators and a display used by persons having ordinary level skill in the art for a similar invention; as disclosed by the references listed above.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-5, 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Curchod (5826578).

Re: Claim 1, Lacking any clear distinguishing factors, Curchod teaches the claim as recited; he teaches a training device with first and second actuators (interpreted as sensors, (22)) to monitor (quantitatively measure the movement of joints of) the upper torso and the wrist of golfer (20) see fig.1, during a golf swing like motion; applying a resistance force to guide moving the stated in a desired manner and further

having a control unit (processor, 30) for recording the movement monitored by the actuators (col.5, ln.62); operating the actuators to apply the resistance forces with his potentiometer (112)

Re: Claim 2, the control unit of Curchod comprises a display (32).

Re: Claim 4-5, Curchod teaches a flashing visual cue when the positioning of any portion of image (50) varies greatly from the positioning of image (60), indicating a means for determining if parameters are within the predetermined tolerance. (col.7, 43-44); further teaching the use of different colors for images 50 and 60 (col.6, ln.9-10) that directly reads on applicant's claimed.

Re: Claim 7, see fig.10A , for rotatable member's upper section (110) and lower section (118).

Re: Claim 8, disclosed in full (fig.4) as the 3d image shown inherently has a front portion for positioning generally adjacent to the user's chest and a back portion generally adjacent to the user's back.

Re: Claim 9, Curchod teaches adjustable right and left shoulder brackets (101, 102) attached to harness (100) using wing nuts

Re: Claim 10, Curchod teaches a base (172);at least one upright connected to and extending from the base (170), the upright connected to and supporting the guide assembly.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Curchod (5826578); in view of Howarth (6986910).

Re: Claim 3, Curchod teaches the disclosed substantially as claimed; however, he lacks specifically a plot of swing parameters as a function of time.

Howarth teaches a plot of swing parameters as a function of time (fig.4)

It would have been obvious to a person having ordinary skill in the art at the time of the applicant's invention, to use the plot of swing parameters as a function of time as taught by Howarth; with the graphical display of Curchod's motion measurement apparatus for a golfer can observe how his movements affect the consistency of successful or unsuccessful swings.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Curchod (5826578); in view of Kossnar (6431991).

Re: Claim 6, teaches the disclosed substantially as claimed with his guide assembly (100); however, he lacks specifically stating use guiding and coordinating the lateral, vertical and rotational movement of the rotatable member as the user executes the golf swing.

Kossnar teaches a training device (fig.1) for use in guiding and coordinating a user's

body position, discusses lateral movement of the hips (abstract), vertical movement (col.2, ln.60-63) and rotational (col.2, ln.55-57) movement when executing a golf swing (in abstract);

It would have been obvious to one having ordinary skill in the art at the time of the applicant's invention to incorporate a guide assembly for guiding and coordinating the lateral, vertical and rotational movement of the rotatable member in a golf swing, in Kossnar's invention with Curchod's since it has been held that the provision of adjustability, where needed, involves only routine skill in the art.

Claims 12,14-15, 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kossnar (6431991); in view of Curchod (5826578).

Re: Claim 12, a training device (fig.1) for use in guiding and coordinating a user's body position, discusses lateral movement of the hips (abstract); vertical(col.2, ln.60-63), and rotational (col.2, ln.55-57) movement when executing a golf swing, the golf swing including a back swing, a down swing, and a follow through (in abstract); Kossnar discloses the claimed except for the golf swing being conducted relative to a target line that extends generally horizontally. It would have been an obvious matter of design choice to have the axis of rotation generally horizontal to the target line, since applicant has not disclosed that having it horizontal solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with Kossnar's almost parallel selection.

Kossnar lacks a first actuator attached to the rotatable member for monitoring the movement of the upper torso during a golf swing; however, in view of Curchod the claimed is met in full;

Curchod teaches actuator (22) attached to the rotatable member for monitoring the movement of the upper torso and applying a resistance force to the upper torso to guide the user in moving the upper torso in a desired manner (rejection of claim 1)

Re: Claim 14, Kossnar teaches a yoke comprising a front portion (92) for positioning generally adjacent to the user's chest; a back portion (13) for positioning generally adjacent to the user's back; and a connecting portion (93-94) connecting the front portion and the back portion and extending to an attachment point (14) for positioning above and intermediate the user's shoulders.

Re: Claim 15, Kossnar teaches adjusting (93-94) to secure(18)around the golfer

Re: Claim 19, Kossnar teaches a floor-mounted base (abstract, (220)) with an upright (213) extending from the base and supporting the guide assembly (210)

Re: Claim 20, Kossnar teaches in full (see claim 17)

Re: Claim 21, Kossnar's belt assembly in contact with user's leg (hip) to limit (control) leg movement while executing a golf swing, reads on applicant's brace limiting movement of at least one of user's legs.(abstract); further recited (in claim 2)

Re: Claim 22, Kossnar teaches the disclosed as claimed; an extensible rod with a longitudinal axis (213) having a first (228) and second (229)end; he shows the first end pivotally connected to the yoke with a rod (231a) proximate to a user's

sternum at the front (outer/insight) portion of the yoke.

Allowable Subject Matter

Claims 13,16-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THERON F. LAMMIE whose telephone number is (571)270-1184. The examiner can normally be reached on 5/4/9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on (571)272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Theron F Lammie/
Examiner, Art Unit 4156

/DMITRY SUHOL/
Primary Examiner, Art Unit 3725

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